

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



**CORRECTED
FISCAL NOTE**

HB 266 - SB 778

March 4, 2019

SUMMARY OF BILL: Requires a person to automatically be granted an order of expunction if the person has not been charged with a misdemeanor or felony within three years following the original charge. Requires the clerk of the court in coordination with the Tennessee Bureau of Investigation (TBI) to expunge such records in an expedited manner. Requires a judge to dismiss any pending misdemeanor charge if a final verdict has not been rendered within three years after an offense has been committed, unless certain criteria are met.

ESTIMATED FISCAL IMPACT:

On February 19, 2019, a fiscal note for this legislation was issued with the following estimated fiscal impact:

Increase State Expenditures – \$4,500/General Fund/One-Time

Decrease State Revenue –

\$806,400/Recurring/TBI

\$2,073,600/Recurring/District Attorney Expunction Fund

*Increase Local Expenditures – Exceeds \$20,000/One-Time**

*Exceeds \$100,000/Recurring**

Based on additional information provided by the Department of Transportation, the proposed legislation could jeopardize federal funding; given this information, the estimated fiscal impact has been corrected as follows:

(CORRECTED)

Increase State Expenditures – \$4,500/General Fund/One-Time

Decrease State Revenue –

\$806,400/Recurring/TBI

\$2,073,600/Recurring/District Attorney Expunction Fund

Increase Local Expenditures – Exceeds \$20,000/One-Time*

Exceeds \$100,000/Recurring*

HB 266 - SB 778 (CORRECTED)

Other Fiscal Impact – The proposed legislation could jeopardize federal funding if it is determined that the state is noncompliant with federal law. The Department of Transportation reports that National Highway System Performance Plan and Surface Transportation Program funds could be withheld.

Corrected Assumptions:

- Current law, Tenn. Code Ann. § 40-32-101(g)(2)(B), authorizes persons who commit certain crimes to petition the court for expunction after at least five years have elapsed since the completion of the sentence imposed for the offense.
- Under current law, Tenn. Code Ann. § 40-32-101(g)(9), petitioners pay the court clerk \$180 to file a petition; \$50, or 28 percent ($\$50 / \180), of each fee is remitted to the TBI and \$130, or 72 percent ($\$130 / \180), of the fee is remitted to the District Attorneys Expunction Fund.
- Automatically qualifying expunctions after a period of three years will lead to a decrease in state revenue.
- Based on information provided by the Tennessee Bureau of Investigation (TBI), the average number of felony and misdemeanor expunctions processed by TBI per year is 64,000.
- This analysis estimates 50 percent, or 32,000 ($64,000 \times 50\%$), of expunctions are for felony convictions and 50 percent, or 32,000, are for misdemeanor convictions.
- This analysis assumes 50 percent of misdemeanor expunctions made automatically after the three year period would have otherwise been filed in petition after the required five year period accompanied by a \$180 petition fee from the offender requesting the expunction.
- The proposed legislation will result in a recurring decrease in state revenue to the TBI estimated to be \$806,400 ($32,000 \times \$180 \times 50\% \times 28\%$).
- The proposed legislation will result in a recurring decrease in state revenue to the District Attorneys Expunction Fund estimated to be \$2,073,600 ($32,000 \times \$180 \times 50\% \times 72\%$).
- The proposed legislation will require court clerks to track applicable cases, notify the court when three years have elapsed, and automatically grant an order of expunctions after a period of three years if the person had not been charged with another misdemeanor or felony offense.
- Tennessee Court Information System (TnCIS) provided by the Administrative Office of the Courts (AOC) is used by some court clerks to track case information.
- AOC will need to update TnCIS to track these matters. The one-time increase in state expenditures is estimated to be \$4,455.
- Court clerks not using the TnCIS system will require updates to software systems to track such matters. The mandatory one-time increase in local expenditures associated with software upgrades is estimated to exceed \$20,000.
- The court clerks will also have to locate and gather records before expungement. This will require additional court clerk staff time.

- Some court clerks will require additional part-time personnel or require current personnel to work additional hours to comply with the provisions of this legislation.
- The mandatory recurring increase in local expenditures for personnel statewide is estimated to exceed \$100,000.
- Any impact resulting from dismissing pending misdemeanor charges three years after the offense is committed is estimated to be not significant.
- Based on information provided by the Department of Transportation, the proposed legislation would violate the minimum penalty requirements outlined in 23 United States Code § 164 for repeat offenders of DUI offenses and lead to the withholding of 2.5 percent of the National Highway System Performance plan and Surface Transportation Program funds estimated to be \$20,000,000 in FY19-20.

*Article II, Section 24 of the Tennessee Constitution provides that: *no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

/amj